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International Covenant on Civil and Political Rights

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Human Rights Committee

Communication No. 2176/2012

Decision adopted by the Committee at its 113th session, 16 March–2 April 2015

Submitted by:	M. (represented by counsel, Mr. Antoine Deguines)
Alleged victim:	The author
State party:	Belgium
Date of communication:	20 March 2012 (initial submission)
Document references:	Special Rapporteur's rule 97 decision, transmitted to the State party on 12 September 2013 (not issued in document form)
Date of decision:	30 March 2015
Subject matter:	Disbarment of a lawyer as a consequence of disciplinary proceedings
Procedural issues:	Insufficient substantiation
Substantive issue:	Discrimination
Articles of the Covenant:	2, 5, 7, 12, 14, 15, 17, 18, 19 and 22
Articles of the Optional Protocol:	2 and 3

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Annex

Decision of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights (113th session)

concerning

Communication No. 2176/2012*

Submitted by:	M. (represented by counsel, Mr. Antoine Deguines)
Alleged victim:	The author
State party:	Belgium
Date of communication:	20 March 2012 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 30 March 2015,

Having concluded its consideration of communication No. 2176/2012, submitted by M.[1] under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and the State party,

Adopts the following:

Decision on admissibility

1.1 The author of the communication is M., a Belgian national born on 14 December 1971. He claims to be a victim of a violation by Belgium of his rights under articles 2, 5, 7, 12, 14, 15, 17, 18, 19 and 22 of the International Covenant on Civil and Political Rights.[2] The author is represented by counsel, Mr. Antoine Deguines.[3]

1.2 On 13 December 2013, the Special Rapporteur on new communications and interim measures decided that the question of the communication's admissibility would be considered prior to and separately from the merits.

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* The following members of the Committee participated in the consideration of the present communication: Mr. Yadh Ben Achour, Mr. Lazhari Bouzid, Ms. Sarah Cleveland, Mr. Olivier De Frouville, Mr. Yuji Iwasawa, Ms. Ivana Jelic, Mr. Duncan Muhumuza Laki, Ms. Photini Pazartzis, Mr. Mauro Politi, Sir Nigel Rodley, Mr. Víctor Manuel Rodríguez-Rescia, Mr. Fabián Omar Salvioli, Mr. Dheerujlall Seetulsingh, Ms. Anja Seibert-Fohr, Mr. Yuval Shany, Mr. Konstantine Vardzelashvili and Ms. Margo Waterval.

[1] The author has requested anonymity.

[2] The Optional Protocol entered into force for the State party on 17 August 1994.

[3] The author was not initially represented by counsel.

The facts as presented by the author

2.1 The author is a lawyer who led a campaign to reform Belgian legislation with a view to strengthening the independence of the judiciary and lawyers. In 2000, he won a case before the Brussels Labour Court, which led to law firms being required to make redundancy payments to salaried lawyers in the event of termination of employment. The author states that, because of his involvement in efforts to protect salaried lawyers' rights, from 2000 to 2010, he was constantly harassed and intimidated by leading law firms and members of the Brussels Bar, who threatened him with disciplinary proceedings and disbarment. He states that he was aware that the Bar would use any pretext to carry out its threats and that throughout this period he was living under constant stress and pressure, which resulted in the closure of his practice.

2.2 In 2005, the author was faced with clients who refused to pay him for his services, even though he had secured a settlement of 400,000 euros in their favour in a court case. According to the author, his clients, who were engaged in the diamond trade, were rich but dishonest, as demonstrated by their previous conviction for fraudulent bankruptcy. As his clients were preparing to flee the country, the author decided to sue them. During the legal proceedings — after his clients had claimed that they had no assets and had sold off all their property in Belgium — the author revealed that they had real property in France. The clients in question took the view that the author had violated professional secrecy and instituted disciplinary and criminal proceedings against him.[4] The author maintains that he did not violate professional secrecy but simply provided the court with information regarding his clients' finances.

2.3 On 2 March 2007, the Brussels Bar notified the author that he was to face disciplinary proceedings following allegations that he had violated professional secrecy and retained court files, and complaints by colleagues concerning his offensive and threatening behaviour towards them. An investigation was carried out by the President of the Bar, but, according to the author, it was intended only to obtain evidence against him. The author refutes entirely the charges against him, which he describes as fanciful, inconsistent and illogical.[5] The author criticizes the "so-called" rules of ethics, which, in his view, are merely a collection of unwritten, undefined, vague and fluctuating rules, which relate to fuzzy notions such as probity, respect and decency, whose interpretation is therefore subject to the discretion of the Disciplinary Board. On 5 March 2007, the author asked that he should no longer be included on the roll of the French Section of the Brussels Bar, with effect from 1 March 2007, citing personal reasons, health problems and harassment by members of the Bar.

2.4 On 18 June 2009, the Disciplinary Board of the Brussels Bar decided to disbar the author for "two gross breaches of professional secrecy in serious ... circumstances; complete disregard for the authorities of the Bar Association and his colleagues in general, including abusive and threatening behaviour towards them ... with no sign of any wish on his part to make amends". The author challenges the penalty imposed by the Bar because, in his opinion, he has never been officially prosecuted or found guilty in criminal

[4] According to the sparse information provided by the author on this matter, it would seem that the criminal investigation was not conclusive, and that he was not prosecuted.

[5] According to the copy of the disciplinary notice provided by the author, the following complaints were upheld against the author: violation of professional secrecy (revealing information regarding former clients with whom he was involved in litigation over fees) and breach of duties of diligence, defence, collegiality, loyalty, dignity and deference towards the Association (failing to reply to the letters sent by the investigator appointed by the Bar, refusing to hand over the files of former clients to the latter's new defence counsel, requesting pro rata payment of fees after informing his clients that he was representing them pro bono, failing to appear at his clients' hearing, defaming former clients, repeated abuse and threats towards colleagues and the President of the Bar, unlawful advertising).

proceedings. On 19 June 2009, the author appealed the Disciplinary Board's decision. On 16 March 2010, the Disciplinary Board of Appeal confirmed the decision to disbar him. On 9 June 2011, the Court of Cassation dismissed the author's appeal. The author therefore considers that all domestic remedies have been exhausted.

2.5 The author maintains that the disciplinary proceedings were merely a pretext to disbar him and that the true reason for those proceedings lay in his activities as a human rights campaigner and the jealousy and resentment felt by some of his former colleagues. He adds that his financial situation has become very difficult because he is no longer able to make a living as a lawyer in Belgium. He adds that he has even been forced to go abroad, first to France and then to the United Kingdom, in an unsuccessful attempt to escape from the harassment of members of the Brussels Bar. He further maintains that his many medical problems and the deterioration in his physical and mental condition are directly linked to the anxiety and stress caused by this case.[6]

The complaint

3.1 The author claims to have been discriminated against by members of the Disciplinary Board of the French Section of the Brussels Bar because of his cultural origins, background, education, values and mother tongue, in violation of article 2, paragraph 1, of the Covenant. He explains that, as a member of a multicultural family, he did not want to choose between French and Flemish, as is the rule in Belgium. He therefore first joined the Flemish Section of the Brussels Bar before joining the French Section in 2005 out of a refusal to be labelled as a Flemish lawyer. He contends that he is seen as the black sheep of lawyers because he is different from the other members of the French Section of the Brussels Bar on account of his training and his time as a member of the Flemish Section of the Bar.

3.2 The author further claims to be a victim of "abuse of rights", in violation of article 5 of the Covenant, because the Disciplinary Board and the Court of Cassation use the rhetoric of human rights to conceal their cynicism and violate all his rights. The author considers that those authorities regularly use the idea of respect for human rights as a licence to do what they want.

3.3 The author claims a violation of article 14, paragraph 1, of the Covenant on the grounds that the disciplinary proceedings against him were not held in public[7] and that they took place in the building housing the executive and representative branches of the Brussels Bar. The author states that the President of the French Section of the Brussels Bar, who instituted the disciplinary proceedings against him, has his office in the same building, thus making it possible for him to control the proceedings. The members of the Disciplinary Board, at both the first hearing and the appeal hearing, were appointed by the President and are lawyers who remain under the disciplinary authority of the President. The author maintains that all the members of the Disciplinary Board should have been automatically disqualified on the grounds that they were his professional opponents and competitors. The author claims that this situation led to a complete blurring of the judicial, executive and representative functions of the Bar, which is incompatible with the independence and impartiality required of a judicial authority. The author also points out that he has been denied an effective remedy to challenge the lack of impartiality of the members of the

[6] The author has submitted to the Committee medical certificates dated 27 November 2012, 5 May 2013, 30 July 2013, 29 August 2013 and 30 July 2014 from various practitioners testifying that the author is suffering from stress and depression.

[7] The author states that the very layout of the hearing room and the difficult access to the building deter the public from attending the hearings of the Bar's Disciplinary Board, which are not, as such, closed to the public.

Disciplinary Board because the recusal request that he made was rejected on the grounds that it had not been submitted by a practising lawyer, since he himself had already resigned. He therefore considers himself to be a victim of a violation of article 2, paragraph 3, of the Covenant.

3.4 The author states that his right to presumption of innocence was violated because the disciplinary board disbarred him for breaching professional secrecy without his having been found guilty of any such act in criminal proceedings. According to the author, the disciplinary proceedings should have been suspended until his guilt had been established by a criminal court. The author therefore considers that this situation constitutes a violation of article 14, paragraph 2, of the Covenant.

3.5 The author claims that his right of defence was violated because he was not allowed to defend himself in the disciplinary proceedings. He adds that the other lawyers were afraid of possible reprisals if they agreed to defend him and that the lawyer assigned to him was not experienced enough for it to be considered that his right of defence was respected. The author considers himself to be a victim of a violation of article 14, paragraph 3, of the Covenant.

3.6 According to the author, not all the elements that he has submitted to the Committee were considered by the Court of Cassation, which can examine only points of procedure, not facts. He considers that the Court of Cassation acts as a "ratification chamber" for the decisions of the Bar's Disciplinary Board and claims that he is also the victim of a violation of article 14, paragraph 5, of the Covenant.

3.7 The author recalls that he had resigned from the Bar in March 2007 because of personal reasons, medical problems and harassment. He was therefore no longer a member of the Bar when the Disciplinary Board decided to disbar him. He therefore considers that the disbarment of an ordinary citizen for a breach of professional secret that did not occur and that has not been proven before a criminal court is a disproportionate and unlawful penalty that is not provided for by law. He claims that this situation constitutes a violation of articles 7, 14 and 15 of the Covenant.

3.8 The author adds that he has been evicted from his home, since he could no longer afford the rent because of harassment by members of the Bar; the latter are also preventing him from securing stable accommodation. He maintains that all the information about him submitted during the disciplinary proceedings was obtained illegally, that his home was unlawfully searched by the police, in particular on 5 July 2010, that his communications were intercepted and that he was obliged to go abroad, first to France and then to the United Kingdom, to escape his persecutors. He claims that these facts constitute a violation of his rights under articles 12 and 17 of the Covenant.

3.9 The author states that he asked the members of the Board to reveal any potential conflicts of interest and to declare their membership of other organizations, but they refused to do so. The author claims to have been discriminated against on the basis of not being a member of those organizations, including the Order of Freemasons, in violation of article 18 of the Covenant.

3.10 The author considers that the disciplinary proceedings against him and his disbarment are due to his activism and, in particular, to his work to improve protection for salaried lawyers and to his scientific and academic research, which led to the publication of a study on corruption in the State party's judicial system. He therefore considers that his freedom of expression under article 19 of the Covenant has been violated.

3.11 The author considers that, given that he resigned from the Bar on 1 March 2007, his disbarment, decided on 18 June 2009 and confirmed on 16 March 2010, constitutes a violation of his right to freedom of association under article 22 of the Covenant, insofar as

article 22 also guarantees the right not to be compelled to join an association against one's will, the right to resign, the right not to be bound by the rules of the Association or be subject to its disciplinary powers.

3.12 The author asks the Committee to order the State party to compensate him for the material and non-material damage suffered over a period of 10 years.

The State party's observations on admissibility

4.1 On 12 November 2013, the State party submitted its observations on the admissibility of the communication. It considers that the author has not sufficiently substantiated his allegations and that he merely makes assertions without producing any concrete evidence justifying admissibility.[8] The State party points out that the author's complaints have been carefully considered by the national authorities, first by the Disciplinary Board of the Brussels Bar, then the Disciplinary Board of Appeal and, lastly, the Court of Cassation. The State party recalls that, as the Committee has confirmed on numerous occasions, in general, it is the responsibility of the appeal courts in States parties, not the Committee, to evaluate the facts and evidence in a specific case unless it can be proved that the national courts' decisions were clearly arbitrary.[9]

4.2 The State party observes that the Court of Cassation dismissed the author's appeal on 9 June 2011 after carefully stating the reasons for its decision and rejecting the various submissions made by the author in support of his appeal. The Court stressed that the proceedings before the Disciplinary Board of the Brussels Bar were in strict accordance with relevant national legislation[10] and respected the principle of equality of arms, which implies merely that all parties to the proceedings should have the same procedural means available to them and be able, under the same conditions, to have knowledge of the material and evidence submitted to the court for its consideration and to challenge those materials freely. It does not follow that parties with different status and interests must always be in absolutely identical circumstances. The Court noted in this regard that the investigator who had led the investigations into the author in the context of the disciplinary proceedings was not a member of the Disciplinary Board and did not take part in the deliberations. The decision to disbar the author was therefore made in accordance with the rules.

4.3 The State party notes that the Court of Cassation was able to assess the proportionality of the penalty in the light of the seriousness of the charges against the author, who could not be granted the benefit of mitigating circumstances and merely suspended. The State party recalls that practically all the complaints against the author were upheld and that the Disciplinary Board found that the author had committed "two gross breaches of professional secrecy under circumstances made all the more serious by the fact that he was motivated solely by the pursuit of his own interest" and that "his disregard and contempt for the rules of law and ethics that are the foundation of the profession of lawyer seem to know no boundaries". The State party points out that the disciplinary penalty and the author's disbarment are not based exclusively on the complaint of breach of professional secrecy reported by the author in the present communication.

4.4 The State party concludes that the claims submitted to the Committee by the author are totally unfounded and that the communication contains no concrete argument whatsoever that might substantiate his assertions and cast doubt on the detailed findings of

[8] The State party cites communication No. 779/1997, *Äärelä and Näkkäläjärvi v. Finland*, Views adopted on 24 October 2001, para. 6.4.

[9] The State party cites communication No. 866/1999, *Torregrosa Lafuente et al. v. Spain*, inadmissibility decision of 16 July 2001, para. 6.2, and communication No. 947/2000, *Hart v. Australia*, inadmissibility decision of 25 October 2000, para. 4.3.

[10] The State party refers, in particular, to articles 459 (2), 465 and 467 of the Judicial Code.

the domestic authorities. The State party therefore considers that the communication is inadmissible.

Author's comments on the State party's submission

5.1 In his comments on admissibility dated 5 December 2013, the author stated that the proliferation of ethical rules and their random application through arbitrary decisions are counterproductive because for every rule that exists there is another that contradicts it. He asserts that he was disbarred merely for asking clients to pay his fees, something which lawyers do on a regular basis, and that a dispute regarding the payment of fees is a civil matter that does not come within the jurisdiction of the Bar's Disciplinary Board. He points out that his disbarment was decided on the basis of the version of the code of ethics that was in force at the time, but which has subsequently been abolished, since it was considered outdated and too discretionary.

5.2 The author considers that his disbarment is a disproportionate penalty and he reaffirms that he has not been convicted in criminal proceedings and that his presumption of innocence has not been respected.

5.3 The author reiterates the various allegations made in his initial submission.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 The Human Rights Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol to the Covenant.

6.2 As required under article 5, paragraph 2 (a), of the Optional Protocol, the Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 The Committee notes that the author has unsuccessfully challenged his disbarment before the competent professional and judicial authorities. The Committee therefore concludes that article 5, paragraph 2 (b), of the Optional Protocol is not an obstacle to the admissibility of the communication.

6.4 The Committee notes that the State party has challenged the admissibility of the communication on the ground that the author has not sufficiently substantiated his claims for the purposes of admissibility. In the light of all the information made available to it by the parties, the Committee observes that the author merely makes assertions without providing an explanation as to the link between the events described and his rights under articles 7, 12, 15, 17, 18, 19 and 22 of the Covenant and any violations thereof. In respect of the allegations of breaches of article 14, paragraph 1, of the Covenant, the Committee observes that, according to its jurisprudence, it is generally for the courts of States parties to the Covenant to evaluate facts and evidence in a particular case, unless it can be ascertained that such evaluation was manifestly arbitrary or amounted to a denial of justice.[11] In the present case, the author's submissions regarding the principle of equality of arms before the Disciplinary Board of the Brussels Bar were very carefully considered by the Court of Cassation before it reached its decision on the proportionality of the penalty in the light of the seriousness of the charges against the author and there is no element which would allow

[11] See, for example, communication No. 1329/2004 and 1330/2004, *Pérez Munuera and Hernández Mateo v. Spain*, inadmissibility decision adopted on 25 July 2005, para. 6.4; and communication No. 1540/2007, *Nakrash and Liu v. Sweden*, inadmissibility decision adopted on 30 October 2008, para. 7.3.

the Committee to conclude that that decision was manifestly arbitrary or amounted to a denial of justice. The Committee therefore considers that the author's claim that the facts, as reported, constitute a violation by the State party of articles 7, 12, 14, paragraph 1, 15, 17, 18, 19 and 22 of the Covenant is insufficiently substantiated for the purposes of admissibility. This part of the claim is therefore inadmissible under article 2 of the Optional Protocol.

6.5 As regards the alleged violations of articles 2 and 5 of the Covenant, the Committee observes that article 2 may not be invoked independently[12] and that article 5 relates to general undertakings by States parties and cannot be invoked by individuals as a self-standing ground for a communication under the Optional Protocol.[13] The complaints are thus inadmissible under articles 2 and 3 of the Optional Protocol.

6.6 The Committee further notes that the guarantees set out in article 14, paragraphs 2, 3 and 5, do not apply to the facts as reported by the author[14] and that the author's claims in this regard are therefore inadmissible *ratione materiae*. It concludes that all the author's claims under article 14 of the Covenant are inadmissible in the light of articles 2 and 3 of the Optional Protocol.

6.7 The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under articles 2 and 3 of the Optional Protocol;

(b) That this decision shall be communicated to the author of the communication and to the State party.

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[12] See for example communication No. 1544/2007, *Hamida v. Canada*, Views adopted on 18 March 2010, para. 7.3.

[13] See for example communication No. 854/1999, *Wackenheim v. France*, Views adopted on 15 July 2002, para. 6.5.

[14] See general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, paras. 30 and 46. See also communication No. 450/1991, *I.P. v. Finland*, inadmissibility decision adopted on 26 July 1993, para. 6.2.